

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1368 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JAVERILAL CHANCHALPRASAD CHHAYA,

Versus

STATE OF GUJARAT & ANR.  
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Appearance:

MR PV HATHI for Petitioner

MR YS MANKAD for Respondent No.2

MR NIGAM SHUKLA for Respondent No.1  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/08/96

#### ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner, by this Special Civil Application is challenging the orders made against him by the Deputy Collector, Anjar-Kutch and the order of the Assistant Judge, Kutch, under which the former order has been confirmed.

2. Proceedings have been initiated against the

petitioner for his eviction from the tenament No.7, situated at Anjar-Kutch, under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1972. The competent authority held that it is a case where the petitioner is a sub-tenant in the tenament. On this ground, the order of eviction has been made. Against the order of competent authority, the petitioner filed an appeal in the Court of Assistant Judge, Kutch and the said appeal has been dismissed. After taking into consideration all the evidence produced in the case, the Assistant Judge has recorded findings of fact that it is a case of subletting and as such, the petitioner is in unauthorised occupation of the tenament.

3. The learned counsel for the petitioner having made submissions at length is unable to make out any error apparent on the face of the orders of both the authorities which calls for interference by this Court. This Court sitting under Articles 226 and 227 of the Constitution of India will not reappreciate the evidence. It is a case where both, the competent authority and the Assistant Judge recorded the findings on facts against the petitioner. The learned counsel for the petitioner is also unable to make out a case that the findings recorded by the authorities are perverse. The original tenant has not contested the proceedings. The Assistant Judge has recorded finding that even if the admissions made by the petitioner before giving him fresh notice by the competent authority are ignored, then also, the evidence given by him is sufficient to prove subletting. The learned counsel for the petitioner lastly contended that the petitioner is an old man residing in this tenament for last many years and in case now immediately he is evicted from the premises, he will face difficulties and inconvenience. The petitioner alone is residing in the said tenament. He prayed that three years' time may be granted to the petitioner to vacate the tenament.

4. The learned counsel for the respondent on the other hand though did not disputed the aforesaid facts, contended that three years' time is too long to be granted to the petitioner to vacate the premises.

5. Having taken into consideration the aforesaid facts and contentions made by the counsel for the parties, I consider it to be a case where the petitioner should be granted indulgence to vacate the tenament within a reasonable time. The petitioner is aged 82 years and he is residing in this tenament for last many years. Taking into consideration these two facts, I

consider it appropriate to grant him two years' time to vacate the tenament.

6. In the result, this Special Civil Application fails. The order passed by the competent authority and the Assistant Judge, Kutch, are maintained. However, the petitioner is allowed to continue in possession of the tenament in question for two years from today subject to conditions that : (i) the petitioner shall furnish an undertaking before this Court within a period of two months from today that he will hand over the possession of the tenament to the respondent No.2 on or before 5th August 1998; (ii) the petitioner shall continue to pay Rs.30/- p.m. as the amount of damages for use and occupation of the tenament. This amount of Rs.30/- p.m. is to be paid by petitioner from 1st April 1996; (iii) the petitioner shall pay this amount every month within a period of seven days from the date on which the same falls due; (iv) in case the petitioner makes a default in making payment of the monthly amount of use and occupation of the tenament for three consecutive months, the indulgence granted by this Court shall stand automatically vacated and it shall be open to respondent No.2 to dispossess the petitioner; (v) the petitioner will be at liberty to pay this amount either in cash or by demand draft or cheque in favour of respondent No.2; (vi) any other amount which remains to be paid by the petitioner as per the directions given in the order of the competent authority or the Assistant Judge, that amount shall also be paid by the petitioner within a period of two months from today.

7. Rule is discharged subject to aforesaid relief to the petitioner and the conditions thereof. No order as to costs.

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(sunil)